



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 1662 OF 2014**

**FLOSSY CHESARO.....CLAIMANT**

**VERSUS**

**RILEY SERVICES LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that on or about 23<sup>rd</sup> November, 2012 the respondent offered her employment as registry clerk for one year. The contract was renewed for a further one year when it expired but on 2<sup>nd</sup> may 2014 the respondent terminated her services and that the reasons the respondent gave for the termination were not genuine and procedural as required under Section 45 of the Employment Act. The claimant further averred that the respondent terminated her service because she was pregnant.

2. The respondent in response pleaded that the claimant was employed as a Registry Clerk stationed at the respondent's Administration Department and was regularly awarded off days to attend ante-natal clinic during her pregnancy in the year 2012 and eventually granted maternity leave which expired on 15<sup>th</sup> November, 2012. The claimant resumed duties and was further granted annual leave when she applied for it.

3. According to the respondent, the claimant's 1 year contract terminated on 23<sup>rd</sup> October, 2013 and she was informed of the decision not to renew the same. Upon receipt of notice of expiry of her contract the claimant made a plea to the respondent's human resource offices to assign her any duties on the basis that she was pregnant, a fact the claimant failed to notify the respondent's management as required by law.

4. On humanitarian grounds, the claimant was offered an oral contract effective 27<sup>th</sup> November, 2014 set to expire on 9<sup>th</sup> June 2014 assigned duties and allowed to proceed on maternity leave. She was eventually granted the 90 days maternity leave and paid full salary. Upon effluxion of her oral contract, the claimant was informed via email that her oral contract would not be renewed and was paid one month's salary in June.

5. In her oral evidence in court the claimant stated that she never understood why she was dismissed. According to her she called the office while on maternity leave and asked if she could add to it her accrued annual leave but was told a letter dated 2<sup>nd</sup> May, 2014 had been written to her stating her contract had ended.

6. Regarding her leave, it was her evidence that she took only fourteen days in November, 2014 because there was a lot of work. A Mr Musomba called and asked him why he did not follow her 2012/2013 contract. He further informed her that because she took three month's maternity leave in 2012. If she went again on three months maternity leave the respondent would be at a loss. Mr Musomba however told her, he would discuss the issue with Mr Abiero, the director and get back to her but he never got back to her.

7. She denied ever receiving any letter informing her that her contract had expired and would not be renewed. In cross- examination she stated that she was to go on maternity leave on 10<sup>th</sup> March, 2014 and was to be paid salary during the leave. She further stated that she applied for ninety days maternity leave and another thirteen days. She also stated that she asked for annual leave for twenty one days.

8. The respondent's witness Mr Musomba stated that he was the director of operations at the respondent. It was his evidence that the claimant joined the respondent in 2011 on a fixed term contract and that the contract expired when the claimant was on maternity leave and a notice of expiry of contract was issued. The claimant thereafter continued on an oral contract after she pleaded to continue working since she had just returned from maternity leave and her husband was not working.

9. On issue of return date from maternity leave, he stated that the same could not be inserted because the claimant's contract was to expire during her maternity leave. In cross- examination he stated that all leave days were approved and that the claimant's maternity leave was to end around 10<sup>th</sup> June, 2014.

10. It was his testimony that the letter approving maternity leave (appendix 5) did not state the contract would expire in June. The termination letter further did not make reference to oral contract. He denied the claimant was terminated on account of pregnancy.

11. The respondent's second witness Ms Lilian Wepukhulu stated that in October 2013 the respondent's HR Manager approached her and pleaded on behalf of the claimant that she be allowed to work until her due date for maternity leave. The claimant's contract was to end in October and she was pregnant so she continued working until she proceeded on her maternity leave.

12. The claimant herein alleges that her contract with the respondent was unfairly and unprocedurally terminated. She further claims that her termination had to do with her pregnancy. The burden of proof that unfair termination has taken place is on the employee. The claimant avers that her termination was on account of her pregnancy yet she admitted that the respondent allowed her to proceed on maternity leave. Leave of absence from work presupposes existence of employment relationship.

13. It is therefore contradictory that the claimant should claim her services were terminated on account of her pregnancy yet she went on maternity leave and upon her return she was informed her contract had expired during the period she was on maternity leave. The claimant in her own testimony conceded that when she was proceeding on maternity leave, her return date to work was left open because her contract was going to expire during the period she was on maternity leave.

14. In her own documents in support of the claim, the claimant attached her termination letter. The letter clearly informed her that her contract with the respondent would not be renewed and therefore her last working date would be 9<sup>th</sup> June, 2014.

15. An employee on a fixed term contract does not have any guarantee that the contract would be renewed upon expiry. Renewal is a matter of mutual agreement and performance of such employee and further whether the employee's services are still needed but for the expiry of the contract.

16. The court has considered the pleadings, the evidence as well as oral testimony of witnesses and is of the view that this claim lacks merit and is hereby dismissed with costs.

17. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**